IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 604 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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SAVITABEN WD/O KESHAVDEV CHIRANJILAL

Versus

MAFATLAL FINE SPINNINNG AND MANUFACTURING CO LTD

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Appearance:

MR MJ THAKORE for Petitioners

MR RAJNI H MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/06/98

ORAL JUDGEMENT

1. Thisis tenant's revision against the decree for eviction passed by the two Courts below against him.

2. The Suit was filed by the landlord respondent

against the tenant - revisionist for his eviction on three grounds. The first was that the tenant was in arears of rent for more than six months which he failed to pay despite service of notice of demand. Second was that the tenant had not used the demised premises for the purposes for which it was let out for a continuous period of six months prior to the institution of the Suit. The third ground was that the tenant has acquired suitable accommodation for himself.

3. The Suit was resisted by the tenant on numerous grounds.

4. Both the Courts below found that the tenants had paid entire rent after service of notice. Hence the first ground of eviction did not weigh with the two courts below. The second ground of eviction also did not weigh with the two Courts below and it was found that the landlord failed to establish that the tenants revisionist did not use the accommodation for a continuous period of six months prior to the institution of Suit and it was incorrect that the revisionist were permitting their servants to sleep in the accommodation.

5. So far as the third ground was concerned both the courts below recorded concurrent finding of fact that the revisionists have acquired vacant accommodation suitable to their requirement for the residential purpose. This finding of fact is supported by evidence on record.

6. Learned Counsel for the revisionist has contended that it was the duty of the landlord to establish two things. The first is that the tenant has acquired additional suitable accommodation after commencement of the Bombay Rent Act, 1947 and secondly that the accommodation so acquired is suitable for the purposes of tenant. According to the learned Counsel both these conditions were not fulfilled, hence Decree for eviction under Section 12(1)(l) cannot be maintained. Learned Counsel for the respondents on the other hand contended that from the evidence on record concluded finding of fact has been recorded by the two courts below, that the revisionist acquired suitable accommodation atleast since 1975 and this suitable accommodation is wholly suited to their requirement. Hence concurrent finding of fact requires no interference.

7. I have gone through the Judgments of the two courts below and considered the arguments advanced by the learned Counsel for the parties.

8. It is true that the landlord should have established that the tenant acquired suitable accommodation after commencement of the Bombay Rent Act, 1947 as applicable to the premises in question. The lower Appellate Court has held that the premises is situated in Navsari which was previously under the earstwhile Baroda State and the Bombay Rent Act became applicable there since 1.1.1943 for residential purposes and since 1.1.1944 for non-residential purposes. It has also recorded a finding that since 1975 the tenant acquired suitable accommodation in the same place and locality. The contention of the learned Counsel for the revisionist therefore can not be accepted that this finding is perverse and is irrelevant. The defendants have taken contradictory stand. Some times they have said that the additional accommodation was acquired about 40 years before institution of the Suit. That means some where in 1944 or so. They filed rent receipts and the earlier rent receipt was of 1961. However, in the written statement all-together different case was taken by the revisionist. Their case was that the disputed accommodation was taken on lease first and because the accommodation in this portion was insufficient hence additional accommodation at Nagin Jivan Chawl was taken. Evidence on the other hand was that additional accommodation at Nagin Jivan Chawl was taken first. These two contradictions could not be reconciled by the learned counsel for the revisionist. More over the evidence, whether oral or documentary, which is contrary to the pleading could not be accepted nor the same is relevant and admissible. Since in the written statement it was specifically pleaded that the accommodation at Nagin Jivan Chawl was taken subsequently no evidence, oral or documentary or in the nature of Rent receipt, could be admitted for holding that this accommodation ws taken on rent prior to taking disputed accommodation on rent. The lower Appellate Court therefore rightly considered this contradiction and rightly rejected evidence which is not in consonence with the case set up in the written statement. Evidence against pleadings or contrary to pleadings cannot be accepted and relied upon for which the case reported in A.I.R. 1987 SC 2179 can be referred.

9. From oral and documentary evidence on record the lower Appellate Court has concluded that at-least since 1975 all the defendants are residing in the additional accommodation in Nagin Jivan Chawl. If this is so then it was rightly concluded that this additional accommodation was acquired after commencement of the Rent Act. It is the case ofthe plaintiff in the plaint that

this additional accommodation was acquired in 1974 or 1975. The plaint case therefore found support from oral as well as documentary evidence on record.

10. Learned Counsel for the revisionist relying upon a case of this Court reported as the case of Soni Jagiram V/s. Manchha ben, in 16 G.L.R. 991, contended that suitable accommodation has to be distinguished from additional accommodation and if the tenants acquired additional accommodation to meet the requirement for their family it cannot be said that this additional accommodation is suitable accommodation to accommodate the entire family of the tenants. The proposition of law laid down in this case can hardly be disputed, but on the facts of the case before me it is established that the accommodation at Nagin Jivan Chawl was not additional accommodation, but it was suitable accommodation inasmuch as all the tenants, viz. defendants No.1 to 4 are residing therein. The defendants' case that the defendants No.1 & 2 are residing in the accommodation at Nagin Jivan Chawl and the defendants No.3 & 4 are residing in the disputed accommodation was also rightly disbelieved. The defendant No.3 did not care even to file written statement or enter the witness box. The defendant No.4 also did not enter the witness box. The result is that these defendants, if examined, could have supported the defendants' case that they are occupying the disputed accommodation. Their non-production is a ground for drawing adverse inference against defendants' case. If all the defendants are accommodated in the accommodation at Nagin Jivan Chawl it was rightly concluded by the lower Appellate Court that such accommodation was a suitable accommodation for the purposes of the tenants. Consequently it cannot be said that the two conditions stressed by the learned Counsel for the revisionist were not established by the respondents.

11. To sum up therefore it cannot be said that there is no perversity in the findings recorded by the two Courts below nor there is any error in the judgments of the two Courts below. There is thus no merit in this revision which is hereby dismissed with costs. Rule discharged. interim relief vacated.

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